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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,488	08/13/2001	Didier Candau	016800-457	5299

7590

11/01/2002

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EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/927,488

Applicant(s)

CANDAU, DIDIER

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-13, and 15-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Acknowledgment is made of the amendment filed 8/9/02. Claims pending are 1-31. Claims 5 and 14 remain withdrawn from consideration. Claims 1-4, 6-13, and 15-31 stand rejected.

#### ***Double Patenting***

1. The rejection of Claims 1-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent No. 6,251,373 is maintained for the reasons of the record.

#### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The rejection of Claims 1-4, 6-13 and 15-31 under 35 U.S.C. 103(a) as being unpatentable over either Hansenne or Allard et al. in view of Huglin et al. is maintained for the reasons of the record.

#### ***Response to Arguments***

4. Applicant's arguments filed 8/9/02 have been fully considered but they are not persuasive.

In response to the Applicant's arguments with respect to the obviousness-type double patenting rejection, it is noted that the additional sunscreens compound of Candau'373 is not excluded by the open-end language of the instant claims. Further, the Applicant argues that "Candau is silent as to water remanence-enhancement." In response, it is noted that the

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amounts of benzotriazole and bisresorcinyltriazine compounds in Candau's compositions overlap with those instantly claimed.

With respect to the §103(a) rejection, the Applicant argues that "both Hansenne and Allard stress that it is the combination of their particular components which synergistically produces enhanced SPF. One of skill in the art would therefor not be motivated to substitute any component thereof with the bis-resorcinyltriazine of Hüglin because to do so would likely ruin the SPF obtained absent such substitution." In response, it is noted that nowhere in the Office Action, the Examiner suggested that one of skill in the art would be motivated to *substitute* the sulfonic/benzimidazole compounds of Hansenne with the claimed triazines. Hansenne teaches that the sunscreen compositions according to her invention may contain triazine derivatives *in addition to* the synergistic mixture of benzotriazole-substituted silicone compounds and sulfonic/benzimidazole compounds. See col. 7, lines 9-13 and 16. With respect to the Allard reference, it explicitly teaches compositions containing a 1,3,5-triazine derivative and a silicone compound containing benzotriazole substitution. See Abstract. While the 1,3,5-triazine derivatives of Allard et al. are different from the Applicant's elected species of triazines, they are structurally similar and used for the same art-recognized purpose. Therefore, it is the Examiner's opinion that, absent a showing to the contrary, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use bis-resorcinyltriazine of Huglin et al. for cosmetic sunscreen compositions of either Hansenne or Allard et al. for its art-recognized purpose and with a reasonable expectation of deriving the same cosmetic effect as set forth in the art.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

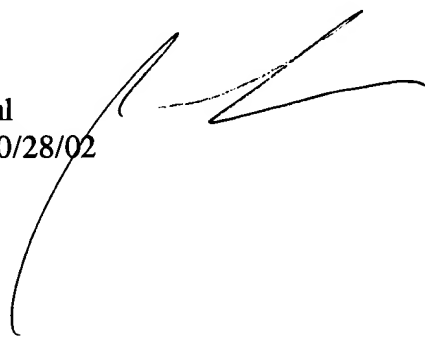
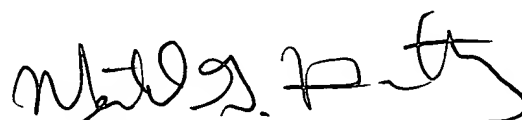
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

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ml  
10/28/02

A handwritten signature in black ink, consisting of a large, sweeping 'L' shape followed by a horizontal line.A handwritten signature in black ink, appearing to read 'Michael G. Hartley' in a cursive style.

MICHAEL G. HARTLEY  
PRIMARY EXAMINER